and reëntered the premises and the trustee peaceably surrendered possession. He then filed a petition seeking an order to restrain the lessors from enforcing the forfeiture. *Held,* that the trustee was not entitled to relief. *In re Elk Brook Coal Co.* (1919, D. Pa.) 44 Am. B. Rep. 283.

Under section 70a of the Bankruptcy Act a trustee takes "title" to a lease held by the bankrupt only in case he elects to accept it within a reasonable time after his appointment. If he does not elect to accept, the lease remains the property of the bankrupt. *In re Frazer* (1910, C. C. A. 1st) 183 Fed. 28. In such case the bankrupt continues to be liable on his covenant for the payment of rent, taxes, royalties, etc., accruing after the petition in bankruptcy, the landlord's right arising from such covenants not being a provable claim within section 63a of the act. *In re Roth & Appel* (1910, C. C. A. 2d) 181 Fed. 667. See Hine, *The Effect of Failure to Perform Contracts Made Prior to Receivership* (1914) 24 YALE LAW JOURNAL, 111, 119. It is within the discretion of the trustee whether to accept or reject a lease burdened with obligations. *In re Cogley* (1901, D. Iowa) 107 Fed. 73. If he elects to accept, he takes subject to all claims and defects existing at the time of adjudication. *Chattanooga National Bank v. Rome* (1900, C. C. N. D. Ga.) 102 Fed. 755. The vital question presented in the principal case is whether or not the adjudication in bankruptcy operated to prevent the lessors from exercising their power to enforce a forfeiture as provided by the terms of the lease. It has been held that where notice of forfeiture is served before the adjudication, the bankruptcy court will by decree enforce the forfeiture and order the trustee to surrender the property. *Lindeke v. Associates Realty Co.* (1906, C. C. A. 8th) 146 Fed. 630. The same rule would seem to apply even though the power were not exercised until after the adjudication, and the principal case appears sound, especially in view of the fact that the trustee's peaceful surrender of the property might well be treated as an election on his part to reject the leasehold.

CONSTITUTIONAL LAW—IMPAIRMENT OF CONTRACT—EFFECT OF STATE STATUTE ON MUNICIPAL FRANCHISE CONTRACT.—The defendant street railway accepted the terms of a municipal franchise ordinance passed in 1902 and agreed to sell working people half-fare tickets good on all cars during certain hours. State "anti-pass" legislation of 1907 forbade all such discrimination. The defendant then refused to carry out its agreement. This bill was brought by the city to obtain a mandatory injunction. *Held,* that the bill should be dismissed. *Dubuque Electric Co. v. City of Dubuque* (1919, C. C. A. 8th) 260 Fed. 253.

It is well established that a city may have the power to make valid franchise contracts. *Vicksburg v. Vicksburg Waterworks Co.* (1906) 206 U. S. 496, 27 Sup. Ct. 762; *Cleveland v. Cleveland City Ry.* (1904) 194 U. S. 512, 24 Sup. Ct. 756. And even increased war costs may not justify the public utility in refusing to perform. *Columbus Ry. Power & Light Co. v. City of Columbus* (1919) 249 U. S. 399, 39 Sup. Ct. 349; (1919) 28 YALE LAW JOURNAL, 826. Nor may the city disregard its duties arising from the contract. *Vicksburg Waterworks Co. v. Vicksburg* (1904) 202 U. S. 453, 26 Sup. Ct. 661. It might seem that Article I, section 10 of the federal Constitution would prevent any impairment of such contracts by state action. But a municipal corporation is merely a political sub-division of the state. *Covington v. Kentucky* (1899) 173 U. S. 231, 19 Sup. Ct. 383; *East Hartford v. Hartford Bridge Co.* (1850, U. S.) 10 How. 511. Its rights and duties, etc., arising from contracts therefore may be changed at the will of the state. *City of Pawhuska v. Pawhuska Oil & Gas Co.* (1919, U. S.) 39 Sup. Ct. 526. In such case, however, the assent of the other contracting party must be obtained or the state law may be invalid as an impairment of contract. *Von Hoffman v. City of Quincy* (1867, U. S.) 4 Wall. 535. The constitutional difficulty in the principal case is usually avoided, however, by holding

that the contract was made with an implied reservation in favor of the proper exercise by the state of its police power. *Sioux City Street Ry. v. Sioux City* (1891) 138 U. S. 98, 11 Sup. Ct. 226. *Cf. In re Searsport Water Co.* (1919, Me.) 108 Atl. 452. The state may on that ground annul contracts between a public utility and its patron where the contract rate has become unreasonable. *Union Dry Goods Co. v. Georgia Public Service Corporation* (1919) 248 U. S. 372, 39 Sup. Ct. 117. And the public utility has been allowed in such case to refuse performance on its own initiative. *V. & S. Bottle Co. v. Mountain Gas Co.* (1918) 261 Pa. 523, 104 Atl. 667. But if the utility is to be considered to have contracted regarding its rates, it would seem the contract duty should be binding until the state has acted. *Manitowoc v. Manitowoc & Northern Traction Co.* (1911) 145 Wis. 13, 129 N. W. 925. The decision in the principal case is clearly sound on either of the two grounds.

CONTRACTS—THIRD PARTY BENEFICIARY—MATERIALMEN'S BONDS.—A state statute required contractors with municipalities to execute a bond for the payment of all subcontractors and materialmen. The contractor demanded a bond from his subcontractor, which was issued with the defendant company as surety, reciting that it was as provided by the above statute and was for the benefit of materialmen and others. The plaintiff furnished materials to the subcontractor for which it was never paid. It then sued the defendant surety who contended that the plaintiff should not recover because it was not a subcontractor. *Held,* that the plaintiff should not recover. *Carolina Portland Cement Co. v. Carey & Boettner* (1919, La.) 82 So. 887.

The court held that the bond was not required by the above mentioned statute, and that hence the question was one of construction of a common law bond. By the Code of Louisiana a third party beneficiary to a contract can recover. Civil Code of La. Art. 1902. And the trend of authority seems to favor recovery by materialmen on such bonds. *Cf. Builders Lumber & Supply Co. v. Chicago Bonding & Surety Co.* (1918) 167 Wis. 167, 166 N. W. 320; *cf. Allen & Currey Mfg. Co. v. Shreveport Waterworks Co.* (1905) 113 La. 1091, 37 So. 980; see also COMMENT (1919) 28 YALE LAW JOURNAL, 798. But the court in the instant case reasoned that the bond must be construed *strictissimi juris,* and that since it referred to the statute, the intention was that the plaintiff should not be protected by it. It seems well settled, however, that this rule does not apply to bonds written by surety and insurance companies. Their bonds, like contracts of insurance, are to be construed against them. *United States v. Lynch* (1912, D. Del.) 192 Fed. 364; *American Surety Co. v. Pauly* (1898) 170 U. S. 133, 18 Sup. Ct. 552; see COMMENT (1917) 26 YALE LAW JOURNAL, 320; (1918) 28 *ibid.,* 193. And in view of the fact that the bond expressly bound the defendant in favor of "all subcontractors under said subcontractors" and of "furnishers of materials," it would seem to include the plaintiff in its terms. Hence the plaintiff should have been allowed to recover as third party beneficiary. The mention of the statute in the bond only tends to show that the parties thought they were legally bound to make the bond. That they had misinterpreted the statute would seem to be an insufficient reason for overriding the express terms of the bond as against one who thereafter furnished materials to the principal.

DAMAGES—DECLINE IN VALUE OF STOCK DURING LITIGATION.—The plaintiff sued the defendant to set aside a sale of bank stock as fraudulently made to defeat execution on their judgment against the transferor. During the litigation the stock declined in value. The transfer was set aside and the proceeds from the sheriff's sale were less than they would have been had the stock been sold at the beginning of the suit. The plaintiff then brought this action to recover